the purpose rather than at the results of the condition, and this is the position taken by some of the later decisions.[12]

Such has been the result even where the courts have construed the stipulation as a condition and consequently it has been held that if an intention to support, rather than to restrain marriage, can be discovered the condition will be upheld even though it incidentally tends to restrain.[13] In view of the liberal attitude manifested in these decisions, the court in the case under discussion, although it felt bound to construe the language as importing a condition, might have interpreted it as a provision intended to furnish maintenance until marriage, and therefore valid, thus accomplishing the result desired by the testator.

ADMISSIBILITY OF EVIDENCE *res inter alios acta*.—The rule that evidence of *res inter alios acta* is inadmissible[1] has become subject to so many exceptions that, as a principle of general application, its value has been considerably diminished. Viewed solely from the standpoint of its inherent relevancy such evidence surely is not under all circumstances to be deemed inadmissible,[2] for the term relevancy does not, strictly speaking, connote the necessity of absolutely conclusive proof.[3] Logically, it need have only such probative value as will reasonably tend to justify the conclusion in support of which it is offered.[4] It is, of course, obvious that proof of a pre-existing fact which, though similar to that in issue, has no causal connection therewith does not necessarily determine the character of the one in question and to this extent such evidence may properly be considered irrelevant. It is true, nevertheless, that a previous act, omission or result, may be so characterized by a particular mental attitude or peculiar physical condition of the thing producing the result that the continuance of such attitude or condition becomes probable upon proof of a later similar act. Thus, having established the existence of a particular plan,[5] habit[6] or custom,[7] proof of specific acts done in accordance therewith raises a presumption that subsequent similar acts are also the result of the same mental attitude. In like manner, evidence of frequent accidents at a given place is pertinent in an inquiry as to its dangerous character[8] and proof of negligence[9] or due care[10] under given conditions, although by no

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[12]Jones *v.* Jones *supra;* Mann *v.* Jackson (1892) 84 Me. 400; and see Selden *v.* Keen *supra; cf.* Cooper *v.* Remsen (1821) 5 Johns. Ch. 459; Thayer *v.* Spear (1855) 58 Vt. 327.

[13]Jones *v.* Jones *supra;* Mann *v.* Jackson *supra.*

[1]Holcombe *v.* Hewson (1810) 2 Campb. 391; Delamotte *v.* Lane (1840) 9 C. & P. 261.

[2]Darling *v.* Westmoreland (1872) 52 N. H. 401.

[3]Lane *v.* B. & A. R. R. Co. (1873) 112 Mass. 455.

[4]Shea *v.* City of Lowell (Mass. 1864) 8 Allen 136.

[5]Hoxie *v.* Home Ins. Co. (1864) 32 Conn. 21.

[6]Smock *v.* Smock (1856) 11 N. J. Eq. 153.

[7]Pierson *v.* Atlantic Nat. Bank (1879) 77 N. Y. 304.

[8]District of Columbia *v.* Armes (1882) 107 U. S. 519; Quinlan *v.* City of Utica (N. Y. 1877) 11 Hun. 217.

[9]Parkinson *v.* Nashua & Lowell R. R. Co. (1881) 61 N. H. 416.

[10]Davis *v.* The Railroad (1894) 68 N. H. 247.

means conclusive, is of importance as being indicative of the probable quality of a particular act done under like circumstances. It is apparent, therefore, that evidence *res inter alios acta* often has a definite probative value and consequently is clearly relevant.[11]

The true reason for its rejection is, then, in many cases, that the introduction of circumstances collateral to the real point in issue operates not only to confuse the jury[12] but also to place upon the opposite party the necessity of meeting issues as to which he cannot properly be prepared.[13] Obviously, however, such evidence is not always objectionable on this ground for if it is readily apparent that the circumstances of each case are identical with the one in question no such complication results.[14] Moreover, when it is sought to show the consequences of a given condition with respect to the average man proof of previous occurrences does not necessarily raise collateral issues, provided always the number of instances introduced is sufficiently large to justify a disregard of possible variations in individual cases. Difficulty arises, therefore, only when the absence or presence of complicating elements must be established in order to determine the actual baring of the evidence upon the fact to be proved.

Even assuming that the nature of the evidence is such as to raise collateral issues the weight of this objection as an argument against its admission would seem to vary inversely with its probative force. Thus, if its pertinency is slight the court may properly exclude it[15] whereas if it tends strongly to establish the point in issue its value as a means of proof should overcome the objections arising from the practical difficulties attendant upon its introduction.[16] Moreover, because of the necessity arising from the lack of better proof, these objections may likewise be surmounted, even where the probative force of the evidence is slight.[17] The question is, therefore, one addressed primarily to the discretion of the court.[18]

In a recent case, *Robbins* v. *Lewiston, A. & W. St. Ry.* (Me. 1910) 77 Atl. 537, the plaintiff offered evidence of numerous negligent acts on the part of an employee to show (1) his incompetency, (2) the master's knowledge of such incompetency and consequent lack of due care in retaining the servant in his employ. Surely, having conceded the negligent character of the acts in question evidence of this nature would be indicative of the employee's general attitude toward his work and therefore of his unfitness properly to perform his duties. In the same way, it may be said to raise a presumption that the master must

[11]Lowenstein *v.* Lombard Ayres Co. (1900) 164 N. Y. 324; Folsom *v.* Concord & Montreal R. R. (1896) 68 N. H. 454.

[12]Wise *v.* Ackerman (1892) 76 Md. 375.

[13]Dalton *v.* C., R. I. & P. Ry. Co. (1901) 114 Iowa. 257; Temperance Hall Ass'n. *v.* Giles (1869) 33 N. J. L. 260; Jamieson *v.* Elevated Ry. (1895) 147 N. Y. 322.

[14]See District of Columbia *v.* Armes *supra.*

[15]Dalton *v.* C., R. I. & P. Ry. Co. *supra;* Spiva *v.* Stapleton (1861) 38 Ala. 171; Odell *v* Rogers (1878) 44 Wis. 136.

[16]See Shea *v.* City of Lowell *supra.*

[17]Sheldon *v.* H. R. R. R. Co. (1856) 14 N. Y. 218; Grand Trunk R. R. Co. *v.* Richardson (1875) 91 U. S. 454; Cox *v.* C. & N. W. Ry. Co. (1900) 92 Ill. App. 15; City of Chicago *v.* Doolan (1900) 99 Ill. App. 143.

[18]Emerson *v.* Lowell Gas Light Co. (Mass. 1863) 6 Allen 146; Isbell *v.* N. Y. & N. H. R. R. Co. (1857) 25 Conn. 556.

have had actual knowledge of the employee's inefficiency;[19] but it is conceived that, to be properly admissible for this last purpose, the number of acts should be much larger than for the former, in order that the possibility that none of them was brought to the master's attention be eliminated. The court seems, however, to have considered that the inquiry of primary importance was whether the employer should, by an exercise of reasonable care, have known of its servant's incompetency. Under this theory of the case, proof even of a comparatively small number of instances of negligent conduct would be requisite.[20] It seems, therefore, that under the circumstances the court properly held the evidence admissible.[21]

THE NECESSITY OF PRIVITY IN ADVERSE POSSESSION UNDER THE STATUTE OF LIMITATIONS.—At common law mere possession was protected against all the world except the true owner,[1] and when the latter's claim was barred this possession ripened into a full and indefeasible title.[2] From the first the theory of the English Statutes of Limitations was that the owner's right of action was destroyed unless he could show seisin since a fixed date,[3] or, later, possession within a certain number of years. The law looked to the demerit of the claimant who had long neglected his claim, rather than to the character of the occupancy meanwhile, or the merit of the possessor.[4] Since, however, lack of possession on the part of the owner was not sufficient to set the statute running,[5] an actual ouster was necessary, and the possession must have been adverse to the owner's title.[6] Given, then, an ouster and adverse possession, it follows from the above theory of the statute, that after the lapse of the period of limitation a full title was vested in the occupant, subject to the action in ejectment of any intermediate occupant who had been ousted,[7] but totally irrespective of the number and connection of adverse possessions meantime.[8] It would seem, then, that the courts were not in strictness bound, under this theory, to require that for the running of the statute there should be unbroken continuity of adverse possession. The English cases decided under the statute of 21 Jac.

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[19]Shaw *v.* Chicago etc. Ry. Co. (1900) 123 Mich. 629.

[20]Stoll *v.* Daly Mining Co. (1899) 19 Utah 271; Pittsburgh etc. Ry. Co. *v.* Ruby (1871) 38 Ind. 294.

[21]Chapman *v.* Erie Ry. Co. (1874) 55 N. Y. 579; Baltimore & O. R. R. Co. *v.* Camp (1895) 65 Fed. 952.

[1]Doe *v.* Dyeball (1829) Moo. & M. 346; Asher *v.* Whitlock (1865) L. R. 1 Q. B. 1; Perry *v.* Clissold (1906) L. R. [1907] App. Cas. 73.

[2]Ames, Disseisin of Chattels 3 Harv. L. Rev. 318-321, and citations.

[3]3 Cruise Dig. 539.

[4]Ames, Disseisin of Chattels *supra* 318; Doe *v.* Carter (1846) 9 Q. B. 863.

[5]McDonnell *v.* McKinty (1847) 10 Ir. L. R. 514.

[6]Reading *v.* Royston (1701) 2 Salk. 423; Jackson *v.* Parker (N. Y. 1802) 3 Johns. Cas. 124.

[7]Asher *v.* Whitlock *supra.*

[8]Ames, Disseisin of Chattels *supra* 323-325; Doe *v.* Carter *supra.* See also Day *v.* Day (1871) L. R. 3 P. C. 751, 761.